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* PROFESSIONAL ETHICS.

Introductory.

It is the desire of the High Court that the apprentices who are to be enrolled as vakils shortly should have the benefit of a course of lectures on professional ethics and etiquette and on the conduct of cases. You are all studying with some practitioner or other now, and, no doubt, have gained a certain amount of practical acquaintance with the way in which cases have to be conducted and argued, and I have no doubt that some of the problems that are likely to confront you when you actually enter on your profession are already familiar to you. What the duties of a vakil are towards the court, towards his clients, towards other members of the bar, and towards the public will have to be considered by me in the course of the lectures that I am asked to deliver. There is no book that treats of this subject specially, although a great deal of information may be gleaned from a large number of books and from articles written by eminent persons in legal journals. It is proper that before you enter on your work you should have the benefit of the experience of a senior practitioner and the lessons that he has been able to gather therefrom

The lectures, of course, are intended for gentlemen who are going to become vakils. There may be special subjects that would be of importance if we consider the requirements of other branches of the profession—advocates of the court and attorneys but with these I do not intend to deal. Now only two generations of vakils there have been in Madras, and we may also say that there have probably been only 3 or 4 generations of barristers and attorneys; these classes practising in the Supreme Court; and when the High Court was constituted in 1862

* The first of a series of addresses delivered by the Hon'ble Mr. Justice Sundara Aiyar, one of His Majesty's Judges of the High Court of Judicature at Madras, to the apprentices of the year 1910-11, at the request of the High Court.

they were enrolled as advocates and attorneys of the High Court. There have been many shrewd, able, eminent, upright and conscientious advocates here, but it can hardly be said that there are settled traditions to inspire the young man who is at the threshold of his Profession. Nor has he the memory of great names in the ancient history of the country who pursued advocacy as a profession. In the time of Hindu sovereigns, learned and saintly men certainly graced the tribunal of justice as counsellors and assessors to the King or Judge, expounding the rule of right and wrong, as, in their opinion, was laid down in the books concerned, to have binding application in the country or place where the question for solution arose, but hardly any men of note or fame, who made themselves the representatives of contesting litigants, and made it their task to pick out, embellish and exhibit in attractive garb the points favourable to one of the combatants to show up the opponent's view as an incorrect, distorted and unfair picture of the rights of the question in controversy. Until recently, at any rate, the actual life and work of lawyers in England was not studied by the practitioner in this country, though their independence, learning and fearless discharge of their duties have been well known and have been the inspiration of many. Till within the last quarter of a century the number of professional men in this province, at least, was by no means large. Recruitment was formerly by selection by the presiding judges of the superior courts, and the standard of qualifications for the office was neither high nor of a definite character. The number appointed for each court was understood to be strictly limited, vacancies being filled up as they arose. The favored candidate was generally one who had served as a clerk in the courts or in some public office.

I believe it would be incorrect to say that the profession of advocacy was altogether unknown in this country in olden times.[1] The *Sukraniti* (Ch. iv. 5, S. 108) lays down that in some cases a litigant had a right to be represented by a paid advocate, that is, when he was unacquainted with legal practice or was overburdened with other work. The remuneration to be paid to the advocate, or *niyogi* as he was called, appears to have been fixed on a graduated scale varying from $\frac{1}{16}$th (or $6\frac{1}{4}$ per cent) to $\frac{5}{8}$ths per cent of the value of the matter in litigation. The receipt of a larger remuneration was punishable. Only qualified persons could act as advocates, and corrupt conduct on the part of the niyogis was

1. C. F. *Narada*, Pref. II, § 23; *S. B. E.* Vol. 33, p. 29, and *Mitshakkhara*, Part I, Ch. I, S. 3, Pl. 12; SIRCAR'S Edn., p. 14.

punished. In the case of serious crimes, the benefit of counsel was denied to the accused person—a rule which finds a parallel in the law for a long time prevalent in England[1]. The term 'vakil' is a Persian word, and there is no doubt that claimants and litigants were allowed under the Mahomedan law to be represented by agents learned in the law. After the organization of the judiciary by the East India Company, there can be no doubt that parties were always allowed the services of trained agents. To speak of this province[2]: in Regulation III of 1802 relating to the procedure to be followed in civil litigation in the courts in this presidency, provision is made for the reception of complaints from vakils. Regulation X of the same year enacted rules for the appointment of vakils. That Regulation was repealed by Regulation XIV of 1816 which laid down very elaborate provisions for the appointment, dismissal and conduct of vakils for the Company's courts. You will also find various provisions regarding the employment of agents or vakils in other early regulations such as Regulation VII of 1809 and VI of 1816, which apparently permitted only the employment of a relative, servant or dependant of the litigant to plead his cause, a provision followed also in Regulation XII of 1816 relating to the settlement of certain questions by Revenue courts. Now Regulation XII of 1816 deserves some detailed notice. Appointments of vakils were to be made by the Sudder Court and by the Provincial Courts, the Zilla Courts being entitled to nominate persons as vakils for confirmation by the Provincial courts. Sections 6, 8 to 10 and 14 of the Regulation prescribe a standard of professional conduct in accordance with the best traditions of the profession. I think it would be desirable to draw your attention to some of these provisions to show what a high standard of rectitude was prescribed so early in the history of our country.

Section 6 was in these terms: "Pleaders employed in the civil courts of civil judicature shall be liable to dismissal from their office whenever they may be guilty of encouraging or promoting litigious suits, of wilfully delaying the suits of their clients for their own advantage, or refusing or omitting without suffici-

1. *Cf.* Act XX of 1839 and XXXVIII of 1850.

Cf. Bengal Regulations on the same matter: Regulation VII of 1713, XVI of 1793, S. 4; XIII of 1795, XV of 1795, S. 2; VIII of 1796, VIII of 1797, Ss. 4, 5; V of 1798, Ss. 4 to 15; III of 1802, Ss. 3, 4; X of 1863, XXI of 1803; S. 4; XIII of 1808, S. 6, Cl. 3; III of 1812, S. 3; Regulation XXVII of 1814, VII of 1822, S. 25; X of 1829 S. 18; XIII of 1829, S. 4; V of 1831 S. 18.

For Lower Provinces See XVIII Regulation of 1852.

2. For Bombay: Regulation II of 1827; Ss. 6, 47 to 56, Regulation, III of 1827; S. 3; Reg. IV of 1827, Ss. 2 to 4, 13, 14, 16, 17, 19, 51, 85 & 86; VI of 1827, S. 5; XIII of 1827, S. 38; XVIII of 1827, Ch. III; XXXI of 1827, S. 2.

ent cause to be shown to the court, to carry on the suits of their clients after having accepted a Vakalatnama, of demanding or accepting from their clients any fee or sum of money, goods, effects, or other valuable consideration beyond the fees which they are or may be authorised to receive under the regulations, or of fraudulent practices, neglect or other misconduct in the discharge of their professional duty or of gross profligacy or misbehaviour in their private conduct." You observe that it was not merely professional misconduct that was made a ground of disbarment but also "misbehaviour in private conduct."

S. 8: "The vakils are required to use due precautions to ascertain the real names and the identity of persons who may propose to employ them as pleaders, and any authorised vakil who shall hereafter receive and file a vakalatnama from any person under a fictitious name shall be liable to be dismissed from his office."

S. 9: "The vakils are hereby enjoined not to file any plaint, answer or other pleading without previously ascertaining that such pleading has been duly prepared in conformity with the regulations; that it contains no unnecessary repetitions of former pleadings, no terms of personal abuse or reproach against the opposite party, his vakils, witnesses or other persons, and no groundless imputations on any court of justice or public officer, but that it contains such matter only as is apparently material and relevant to the suit. Every pleading filed by an authorised vakil shall be signed by him, in testimony of his having considered and approved its contents."

S. 9: Cl. (3) "The courts will carefully point out to the notice of the vakils such parts of the pleadings as are irregular; irrelevant, or otherwise objectionable, and shall record their censure of any vakil whose conduct, in opposition to the preceding rules, may in any particular instance demand such animadversion. If, notwithstanding such recorded censure, a vakil shall again be guilty of similar misconduct, he shall be liable to forfeit in each instance the amount of the fee to which he may be entitled in the suit, or to such other fine, to Government, not exceeding twenty rupees, as the court may deem it proper to impose."

S. 10: "The Sudder Adawlut and the several Provincial courts will at all times exercise their discretion in removing from office any pleader of their respective courts who

may be guilty of any of the acts abovementioned, or who may be otherwise deemed unfit for the situation."

S. 22 laid down that "a vakil who has accepted a vakalat for a party shall henceforward be precluded from being employed in the same cause against the party who has so retained him." The rates of fees to be received from clients was strictly regulated by S. 25, not, as now, only the rates which a party is entitled to as costs from his opponent. Section 7 made all agreements for payment of lower rates void, while S. 6 made the demand of higher fees punishable. Some of these rules, no doubt, are undesirable and economically unsound—such as, for instance, the strict regulation of contracts between a vakil and his client. These and other rules have now been abolished, leaving it to the good sense of the profession to carry out their spirit.

Only natives of India of the Hindu or Mahomedan persuasion could be appointed as vakils. They were bound to attend court regularly, whether they had cases to plead or not. Pleaders practising in a court could accept the office of arbitrator in suits pending in the court only with the sanction of the presiding officer.

The next important statute was Act I of 1846. The office of pleader was by that Act thrown open to "all persons of whatever nation or religion." It authorised barristers of Her Majesty's courts in India to plead in the Sudder Courts—not in the lower courts —and it left it to parties and pleaders to settle the remuneration to be paid to the latter by the former. This statute also extended to pleaders of Munsif's courts the rules applicable to those of superior courts, there being no regulation till then applicable to pleaders in Munsif's courts.

Act XX of 1853 absolved the pleader from the necessity of attending court every day "unless he shall be employed in some cause or business, which according to the practice of the court may be transacted therein on that day." It also entitled attorneys of the Supreme Court to practise in the Sudder courts, the previous statute having allowed only barristers to do so. The Acts of 1836 and 1853 have been repealed by an Act of 1884. The present Act applicable to pleaders is the one of 1879 as amended by the Act of 1884 already referred to. I will not deal with the provisions of that Act now as we would probably have to make reference to it frequently in the lectures to follow.

I would like you all to realise that you belong to a most ancient and exalted profession, although not prominent in the

annals of Indian history. Advocates were a most honored section of the citizens of Rome. In Greece it would appear that there was no special class of people who adopted advocacy as a profession. A relative or friend, or one who had, in some indirect manner, an interest in the cause himself, was allowed to help a litigant, but his work was at first confined to composing a speech which the litigant himself read, and the service was rendered gratuitously as an office of kindness. Gradually, however, fees were paid and received. These written arguments are said to have been models of conciseness, for the Athenian courts generally prescribed a time-limit for arguments, which the parties were not allowed to exceed. It is curious to note that the same speech-writer was often employed by both sides in a case and made such engagement the occasion for the exhibition of his polemical skill. You are probably aware that in the State of Rome lawyers occupied a foremost place. As the complexity of the law increased in course of time, its interpretation rested largely with eminent non-official lawyers, whose opinions, called *Responsa Prudentium* were generally adopted by the actual dispensers of justice. Besides them, there was also another class of lawyers known as *Juris Consulti* who were paid for their services and who might be compared to the modern chamber lawyer. The advocate who appeared before the Roman tribunal often did not know much of the law himself, but coached himself in what was necessary for his particular task by seeking the help of these juristic lawyers. The advocate was called an orator, and his profession was often the passport to high office in the State, as it frequently is in modern England. The technical name applied to advocates was *Patroni*, and their parties were known as their *Clintes*—that is the origin of the modern word 'client.' At first the patron was one who gratuitously threw his protection around his dependants and defended them before the public tribunals gratuitously. But in course of time advocacy became the occupation and the acknowledged profession of many learned men. Those who wished to practise in the courts put themselves to a course of severe training for legal instruction under the *Juris Consulti*. As there was no limit to the number of counsel that might plead a litigant's cause a time-limit was fixed in Rome as in Greece. In England also I may tell you that until very recent times there was no limit to the number of advocates who could plead in the same cause The most famous Roman advocates whose orations are still admired lived during the time of the Republic, the age of democratic freedom so congenial to the growth of an indepen-

dent bar. But we are told that the conventional rules which are known by the name 'the etiquette of the profession' were little known amongst them. Solicitation on behalf of one-self and others was not considered wrong even by the best advocates. Some of the virtues, however, that are highly praised in the profession existed even then in a marked degree. Thus Cicero when charged with undertaking the defence of Morena Sulpicius at the expense of a friend, declared : "the principle can never be admitted that we may not defend even our enemies against the accusations of our friends. As for me, it is no longer an open question whether I may refuse the aid of my services in averting danger from the accused," and he declared that the consequence of yielding to the accusations levelled against him would be that a man might be unable to find a counsel to undertake his cause in a State where the wisdom of the ancestors had provided that not even the lowest citizen should be without an advocate.

The palmy days of forensic oratory began to wither away under the cold shade of arbitrary power after the Republic. Litigation became trivial in its character, the dignity of the advocate's office suffered seriously, and historians complained of the ignorance and rapacity of the lawyers. The value of the office was, however, recognised in an Imperial edict which stated as follows: "Praiseworthy and necessary for human life is advocacy which ought to be remunerated by the highest awards." Various regulations were passed according favored treatment to the profession. Lawyers were exempted from many offices which other citizens had to bear. After ceasing to practise, they were admitted to the order of Counts of the first rank and numbered amongst the *Clarissima* of the State. As in the case of those in the military service, the *Patria Potestas* was relaxed in their case and they were permitted to retain for themselves what they earned by their professional work. We may notice a curious ordinance imposing on the presiding judge the duty to see that one party did not retain all the leading advocates on his side. "Muffling' retainers, not altogether unknown in this country, were thus forbidden, and no advocate who was assigned by the judge to a party could decline the brief on pain of disbarment. The spirit of this rule is recognised in England in pauper actions and in this country also in the case of court briefs, particularly in murder cases—only there is no disbarment here. A class corresponding to 'King's Counsel' with similar duties was created in the time of the Emperor Hadrian. Constantine considered it necessary to restrict the number of advocates attached to a forum, and

when vacancies occurred, the qualified sons of advocates were generally given preference. Advocates were forbidden to appear in any other than the ordinary courts. Women were generally not permitted to appear for suitors, though there were exceptions to the rule. Scurrility and abuse of opponents were expressly forbidden by an edict. You see that the conduct of advocates was in a large measure the subject of statutory repletion in the Roman Empire.

In France the profession of advocacy achieved a most exalted position in the early times. They were known as "noblesse de la role," their only patent of nobility being their admission on the roll of advocates. Even during the Roman times Gaul was famous as the nursery of lawyers and acording to Juvenal the world was under obligations to her for instruction in eloquence. The advocates of France rendered great service in political matters and particularly in opposing the pretensions of the Pope of Rome in temporal matters though many of them were themselves clerical men. The King St. Louis felt grateful to them for their help in the struggle against Rome and its *establishments.* The earliest French Code that was ever published devoted one chapter to a consideration of the rights and duties of advocates. They were therein enjoined to present no cause to the court, which was not just and loyal, and to practise courtesy and forbearance towards their opponents, while refuting their arguments, without using words of contumely or abuse. They were also forbidden to make any bargains with their clients respecting their fees during the conduct of a cause—it was always to be settled beforehand. Subsequent sovereigns passed stricter and less wise regulations. According to one of them advocates were compelled to take an oath that they would, both in their oral pleadings and their opinions upon cases submitted to them, discharge their duty with care, diligence and fidelity, and would support causes only so long as they believed them to be just, but abandon them when they discovered that they were not. The amount of their fees was to be regulated by the importance of the cause and the ability of the advocate, but it was in no case to exceed 20 *livres*. There is doubt that advocates were the special care of the French Government and their office was regarded as of special importance. Care was taken to insist upon proper qualification for the office before enrolment and a standard of professional ethics was prescribed which was exceptionally high. Respect for

the court, fidelity and attention to the client, a high tone of private morality, abstention from demanding excessive remuneration and from bargaining for a share in the fruits of litigation, were all enforced. An advocate was not, under pain of being disbarred, to refuse his services to the indigent and the oppressed. Brevity in pleading and argument were not exempt from the range of statutory prescriptions. There were indeed other rules of practice which many must have found it impossible to obey. Thus "an advocate was required to be of imposing presence and a well-proportioned figure so as to make a favourable impression upon the Court and the audience. He was to have an open, cheerful and smiling countenance which would be of itself a letter of recommendation. He was to avoid all appearance of assurance or presumption and on the contrary conciliate good will by a modest and unassuming demeanour. His attitude in addressing the judge was to be respectful and his costume ought to display neither dandyism nor negligence. While speaking he was neither to twist nor to bite his lips. His voice was not to be too loud nor was he, on the other hand, to mumble his words. His action, while speaking, was to be appropriate to his subject and the motion of his limbs was to be duly regulated"—rules worthy of consideration in a country where little attention is paid by most to the manner of advocacy. The order of advocates was practically swept away in France amidst the general destruction caused by the French Revolution. The National Assembly abolished all the rights and privileges of the Bar by a decree of 1790, for they wanted to suppress all real freedom of discussion and to prevent any attempts at the rescue of the objects of their tyranny. In 1804, however, Napoleon decreed the re-establishment of the order "as one of the means most proper to maintain the probity, delicacy, disinterestesdness, desire of conciliation, love of truth and justice and enlightened regard for the weak and the oppressed which are the essential foundations of their profession"—a statement of objects and reasons which admirably sums up the cardinal virtues which should make the profession a blessing to the world.

(*To be continued.*)

TRANSLATION

OF

APARARKA'S COMMENTARY ON YAGNAVALKYA.

(*Continued.*)

Equal Partition and Partition by Stirpes.

" In property acquired in common by all, equal division is ordained. Among grandsons by different fathers, the allotment of shares is according to the fathers." 120

अर्थसमुत्थानं *Arthasamuthanam i.e.*, acquisition of wealth. If all are helpful to one another in the acquisition of wealth, equal division should be made. In this case, even the father should make an equal division. So says *Manu* :[1]

" If among undivided brethren (living with their father), there be a common exertion for common gain, the father shall never make an unequal division ".

While so, it is inferred that in other cases, the partition made by the father may be uneven.

" If all of them, being unlearned, acquire property by their own labour, there shall be an equal division of that property; for it is not the wealth of their father: this rule is clearly settled."[2]

If brothers die with wealth undivided and if one of them has one son, another two and a third more than two, there the apportionment of property to them is proportionate to their father's share. The meaning whether they are two or more, they take only their respective father's share; and not an equal division to them.

Brihaspati[3]:—In what has been acquired in common by all, all are equal sharers. Their sons whether unequal or equal (in number) take the respective shares of their fathers. So it has been declared.

Katyayana :—" If an undivided (younger)brother dies, his son for whom his grandfather had not made any provision should be made a sharer."

Whatever share one gets either from his father's brother or his (the father's brother's) son as patrimony, the same all (his) brothers get according to law. His son also gets the same. The share does not descend further.

If a brother dies with wealth undivided, his son, if he has not got a share from his grandfather, gets his own father's share from the father's brother or his son. Thus his son also

1. Manu Ch. IX. §. 215. 2. Manu Ch. IX. §. 205.

3. S. B. E. Vol. 33 p. 372. Brihaspati Ch. 25 §. 14.

takes, but not his grandson. Such is the meaning. In this matter, *Devala* speaks of a peculiarity :— Partition by Stirpes.

"In the case of a family living united without division or re-united after division, a re-division occurs up till the fourth generation". "Up till that they are sapindas. After that, difference in pinda (arises). In the partition of wealth, sameness in pinda is required." This rule is ordained in respect of several people belonging to the same caste, (of the four castes). If there is only one of the same *Varna*, there is no division.

Vishnu :—Then, partition among brothers : If there are sonless women, they get a share till they beget a son.

Women : brother's wives. To women who are issueless and *enceinte* and who have lost their husbands before delivery, share should be given to them till a son is begotten. If a son is not born, the share reverts by reason of the phrase "till a son is begotten".

The Author now mentions an exception to the rule, above mentioned (*viz.*,) : "If the father makes the division he may make division among the sons as he desires."

EXCEPTION.

"Land acquired by the grandfather, assignments of property,[1] and wealth[2] in these—the ownership of both the father and son is equal." **121** Partition of ancestral Property.

In the grandfather's property, the grandson has an ownership equal to that of his father. Therefore, even if not willing to make a partition, the father should make a partition of his father's wealth at the desire of his (own) son. The division should be an equal one; and not an unequal one as in the case of (his) self-acquired property.

निबन्ध : Nibandha means: payment of a specified amount out of a specified share to particular persons proportioned according to the house or field.

Katyayana :—The grandfather's wealth is common to both the father and son. But in the self acquired property (of the father) the son is not entitled to ownership.

This is to be understood with regard to property acquired by the father without the help of the grandfather's wealth.

1. Colelrooke uses the word "Corrody" but the commentary here dces not bear it out.

2. Colebrooke uses the word "Chattels."

Partition of Ancestral Property.

Vyasa :—The father and the sons are equal sharers in ancestral house and land. The sons cannot claim a share in the father's own property when the father is unwilling. [1]

Brihaspati :—Equal shares have been declared to the father and the son in moveable and immoveable properties acquired by the grandfather. [2]

In property, belonging to the grand-father which had been taken away and has been (afterwards) recovered by the father through his own ability as well as in the property acquired by sacred knowledge, valour in arms, &c., the father's ownership has been declared. [3]

What has been acquired by the grandfather, but which was taken away by another and again recovered by the father by his ability and of that which has been acquired by the father by his learning etc., the father himself is the owner and not the sons. Therefore :

" He may make a gift out of that property, or even consume it, at his will. But in default of his doing so his sons are pronounced to be equal sharers." [4]

Katyayana:—That which had been recovered by one's own ability out of the property taken away (by others) or lost and that which has been earned by oneself (father himself)—all these the father is not made to give in a partition by his sons.

The meaning is :—What has been taken away or lost and acquired by the father through his own ability subsequently—that, the father should not be made to part at the time of partition by the sons. Thus Smritis declare equal ownership of the grandson along with his father in the grandfather's wealth.

OBJECTION— By saying thus, there is no inconsistency with the Sruti he should perform Agnyadhana ceremony, (the commencing ceremony of Agnihotra)[5]. To avoid which contradiction (inconsistency) a secondary meaning (to the above said texts of the Smritis[6]) that when a son is alive, the father should not dispose of or consume away the whole of his father's property but should spare the son's share, has to be attributed.

1. Cf. S. B. E. Vol. 32. p. 370. Brihaspati Ch. 25 §. 22 Col. Di. Bk. V. Ch. 2. §. 94.
2. S. B. E. Vol. 32. p. 370. Brihaspati Ch. 25. §. 3.
3. S. B. E. Vol. 32. p. 372. Brihaspati Ch. 25. §. 12.
4. S. B. E. Vol. 32. p. 372. Brihaspati Ch. 25, §. 13.
5. Yagnavalkya II §. 123.
6. The Smritis declaring equal ownership for the father and son in the grandfather's property. "जातपुत्र कृष्णकेशः अग्नीनादधाति".

ANSWER—The ownership of the father is not lost by the birth of a son by reason of the inconsistency (that will arise) to the Srutis laying down the objects (ceremonies like Agnyadhana, &c.) that should be accomplished by one's wealth. Though that wealth (grandfather's wealth) is common to himself and his son, yet the performance of Agnihotra, etc., is possible either by permission of the son or by making the son's share separate or by acquisition of other wealth. The origin of ownership is not by partition; because (in that case), the father will not be owner before partition; while partition settles the ownership of each owner in particular portions of the common properties that belong to several owners, it does not create new ownership as in the case of acquisition in partnership trade and acquisition in *satra* sacrifices.

Equal ownership of Father and son in ancestral property.

If partition is the cause of ownership, it will create it even in the case of a compulsory partition even though **Gautama** says:—

"A (man becomes) owner by inheritance, purchase, partition seizure, or finding."[1]

This signifies that partition apportions ownership (in specific portions.)

"A son born after partition, of a woman of equal caste, takes his (father's) share; or his share shall be made out of the visible estate from the balance arrived at after taking account of the income and expenditure." 122.

Share for son born after Partition.

A son born of a woman of equal caste after the sons become divided in wealth takes the father's share. In the absence of the father's share if the property, lands etc,—that was (already) partitioned is afterwards visible (in existence) partition should be made after taking into account the income and expenditure relating to it. Manu[2]:—

"A son, born after a division shall inherit the father's wealth only, or shall have a share of it with the divided brethren, if they return and unite themselves with him."

1. S. B. E. Vol. 2 p. 228 Gautama Ch. X. §. 39. Cf. Mitakshara Ch. I S. 13. Colebrooke's translation.

Cf. Mitakshara Colebrooke's Translation §. 4: and note thereto-from Subodini and Balambhatta.

2. Manu, Ch. IX. §. 216.

Share for son born after Partition.

One born after partition shall take only the father's wealth and not the brother's wealth.

In the absence of the father and the brother, he shall divide the father's share along with those who lived united with the father The singular in (the phrase) "son born" is not intended.[1]

Brihaspati says[2] :—"When step brothers (born of different mothers) or uterine brothers have come to a division with their father, after-born brothers shall take their father's share."

In that matter, even if the shares of the previously separated sons are more and the shares of those who are born subsequently and divide only the father's share are less, nothing shall be taken by them (the latter) out of the shares of those previously divided brothers. He (*Brihaspati*) has himself said :

"A son born before (partition) has no claim to the paternal wealth ; nor (can) a brother's wealth (be claimed by) one born after partition".

"Whatever has been acquired, with his own effort, by a father who has come to a partition with his sons, all that belongs to the son born after partition Those born before it are declared to have no right."[3]

The meaning is :—When the son born after partition does not get even a small share from anything in accordance with the above mentioned rules, then he shall get from the brother's share.

Vishnu :—"(Sons) who have separated from their father should give a share to (a brother) who is born after partition."[4]

The Author now mentions in another manner, a kind of divisible property.

Gifts by Parents.

Whatever is given by the parents belongs to him on whom it is bestowed.[5] **123**

Whatever is given by either the father or the mother as a present to the son whether before or after partition, belongs to him alone and is not divisible with the other sons.

Narada[6]:—"Property gained by valour, or acquired through the wife, and gains of science, are three kinds of wealth not subject to partition ; and so is a favor conferred by the father (exempt from partition)"

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1. Otherwise it will mean that only one can take and not the others.Ed.
2. S. B. E. Vol. 33 p. 372. Brihaspati Ch. 25. §. 17.
3. S. B. E. Vol. 33 p 372. Brihaspati Ch. 22 §. 19,
4. S. B. E. Vol. 7. p. 68 Vishnu Ch. 17 §. 3.
5. Yagnavalkya. II. § 123.
6. S. B. E. Vol. 33 p. 190. Narada Ch, 13 §. 6.

"When the mother has bestowed (a portion of) her property on any (of her sons) from affection, the rule is the same in that case also; for the mother is equal to the father (as regards her competence to bestow gifts.)[1]

Gifts by Parents.

Vyasa:—What is given out of affection by the paternal grandfather or by the father or by the mother cannot be taken (by the other) co-parceners.

Narada mentions an exception with regard to immoveables.

"The father is the lord of all moveables (including) diamonds, pearls and corals; but neither the father nor the grandfather is the lord of all (kinds of) immoveables":

"Cloths and ornaments are enjoyed by the favor of the father; but immoveables cannot be enjoyed with the father's favor,"

"Of heirs dividing after the death of the father, the mother also takes an equal share." 123

Mother's Share.

In the partition of wealth between the sons after the father's death, the mother also gets an equal share. The plural "sons" is not intended.[2] Therefore, the mother gets a share which is (equal to) the share of one son. The mention of "mother" is indicative of step—mother etc.

Vyasa:—The father's wives who have no sons are declared to be equal sharers (with the sons); so also the paternal grand-mothers All these are declared equal to the mother".

This is with regard to those to whom stridhanam has not been given.

The Author now mentions another matter that should be done by the sons dividing the wealth.

S. SRINIVASA AIYAR.

(*To be continued.*)

NOTES OF INDIAN CASES.

Santhalva v. Manjanna Shetty.—I.L.R.34 M.1.—This is a decision which leads to startling consequences. Already we hear of dead-lock in the work of several committees. Although one may not agree with all the reasons mentioned by their Lord-

1. S. B-E. Vol. 33 p. 190. Narada Ch. 13 §. 7.
2. Is not restrictive. It signifies the singular as well.

ships the decision of the learned judges seems to be correct. It shows how defective the Act XX of 1863 is and how great is the necessity for having the law amended. The learned judges seem to suggest that the inconvenience caused by their decision which however, it must be said, cannot affect their decision as to the construction of the Act, will not be considerable. The large area over which the committee has jurisdiction, the large number of voters existing in the said area, and the non-existence of any facilities whatever to bring the registry of members up to date-all tend to delay the work of the committee, however much they may be desirous of acting with promptitude. There is not merely a possibility of inconvenience. If no work can be done without the filling up of vacancies, and in many cases the committee consists of a large body of persons (thirty in some cases) no meetings can be held. The executive work of the committee too cannot be done, such as the calling of accounts monthly or periodically. We think there is ugent necessity for the Legislature to intervene to prevent the dead-lock which is sure to arise.

Ranee Annapurni Nachiar *v.* Swaminatha Chettiar.—I.L.R. 34 M. 7.—The decision in this case seems to be, without the actual facts, somewhat an extension of the decision of their Lordships Mr. Justice *Mookerjee* and Mr. Justice *Carnduff* in the recent Calcutta case *Ashad Ali Mollah* v. *Haidar Ali*[1], but from the report of this case in the *Madras Law Journal*, Vol. XX, p. 785, and from the arguments of the Advocate-General in the case it would appear that there was a decree for maintenance. The case therefore exactly resembles the Calcutta case.

Muthu Kana Ana Ramanadham Chettiar *v.* Vada Servai Marakayar.—I.L.R. 34 M. 12.—There is an interesting discussion in this case on the Mahomedan law of *wakfs*. It is well that the learned judges throw doubts upon the reasoning adopted in the earlier case of *Kaleoola Sahib* v. *Nuserudeen Sahib*[2]. They distinguish it upon the ground that in the case under their notice there are no *Fateah* ceremonies for the

1. (1910) I. L. R. 38 C. 13. 2. (1895) I. L. R. 18 M. 201.

deceased donor but the Fateah ceremonies consisted in the distribution of alms to the poor, accompanied with prayers for the welfare of the souls of deceased persons, either the Prophet or other saintly personages in Islamic history or the donor's own ancestors. There is one point in the decision which deserves to be noticed. The learned judges hold that a gift of certain property by way of *wakf* partly for valid charitable purposes and partly for the donor's heirs will operate so as to make the entire property *wakf* for the poor. It seems to us that the learned judges are seeking in this connection the support of the very rule pronounced by the Judicial Committee to be bad. According to the pronouncement of the Judicial Committee we take it that a *wakf* for the donor's heirs cannot be a gift for charitable purpose and is, therefore void. Where there is a gift partly for the poor and partly for the donor's heirs it seems to us that the gift to the donor's heirs cannot be regarded as a gift for a charitable purpose and therefore the rule as to a general charitable intention cannot apply as regards the void gift. The texts of Mahomedan Law which hold that a gift to the donor's heirs is a gift for charitable purposes and which the Judicial Committee say should not be followed, cannot be invoked for the purpose of holding that according to the Mahomedan Law in the case of a gift made in such a way a general charitable intention may be gathered. In the case under notice, however, no such difficulty can apparently arise as according to the document of wakf in this case the entire property is given for the purpose of charity and out of the income certain distributions are made. When the distribution is void the gift to charity will prevail unless it is said that such a gift is illusory but this is found against by the learned judges.

Aiyavu Muppan *v.* Vellaya Nadan.—I. L. R. 34 M. 55.—It is well that the learned judges point out that the decision of the Judicial Committee of the Privy Council in the recent case of *Rup Narain* v. *Gopal Devi*[1] has not the sweeping effect which at the outset one may be led to think it may have. As the learned judges say, having regard to the decision of the House of Lords in *Smurthwaite* v. *Hannay*[2] followed by their Lordships of the Judicial Committee in *Subramania Aiyar* v. *King-Emperor*,[3] a misjoinder of causes of action can not

1. (1909) L. R. 36 I. A. 103. 2. (1894) A. C. 494.
3. (1902) I. L. R. 25 M. 61.

generally be taken to be a mere irregularity that will be cured by S. 578, C. P. C.

Subramania Mudali v. Velu.—I. L. R. 34 M. 68. —The learned judges in this case held that they were bound by authority not to refuse rights of maintenance to an offspring of an adulterous or criminal intercourse. They also held that such a right might be claimed by the illegitimate son not merely against his putative father but also against those who took his father's property by survivorship. Of the three cases cited by the learned judges in support of their position the first *viz.*, that of *Venkatachella Chetti* v. *Parvatham*,[1] is only an authority for the proposition that a son born of adulterous intercourse is not entitled to rights of inheritance. The right of maintenance of such a son was not in question although the learned judges would seem to suggest that he might be entitled to maintenance. The second, *viz.*, that of *Viramuthu Udayan* v. *Singaravelu*,[2] may seem to be a direct authority. Maintenance was claimed in that case after the father's death. It does not, however, appear from the report whether the person against whom maintenance was claimed took by survivorship or by right of inheritance. From the fact that maintenance was decreed out of the father's estate it might be inferred that the estate was taken by right of inheritance and not by right of survivorship. In the last case cited, *viz.*, that of *Kuppa* v. *Singaravelu*[3] it was held that the son of an adulterous intercourse was entitled to maintenance, but the claim here was only against the father. Upon the question whether maintenance can be claimed against persons that take by survivorship the share of the putative father the learned judges refer to a number of decisions and, if those decisions are correct, no distinction in principle can be drawn between the offspring of an adulterous intercourse and the illegitimate son of an unmarried woman. It is, however, doubtful whether the decisions relied upon really support the proposition for which they are cited. The first case, *viz.*, that of *Chuoturya Run Murdun Syn* v. *Sahub Purhulad Syn*[4] was one in which the estate was taken by inheritance from the putative father. In the second case *Muthusami Jeyavara Yettappa Naiker*

1. (1875) 8 M. H. C. R. 134.
2. (1877) I. L. R. 1 M. 306.
3. (1883) I.L.R. 8 M. 325.
4. (1857) 7. M. I. A, 18.

v. *Venkateswara Yettayya*[1] although it might be said that the estate in an impartible Zemindari was taken by the brother of the deceased Zemindar by survivorship there was no decision by the Judicial Committee that the Zemindari in the hands of such a brother was liable. The question was directed to be remitted to the High Court for consideration. In the third case, *Anantayya* v. *Vishnu*,[2] the claim was against the legitimate brother, *i. e.*, the legitimate son of the putative father. The legitimate son took the property by survivorship undoubtedly, but the claim against him might not stand upon the same footing as a claim against the brother or the other coparceners of the putative father. The last case *Gopalasawmi Chetti* v: *Arunachalam Chetti*[3]. is not reconcileable with the principles of Hindu Law. We cannot understand how the illegitimate son in that case was not entitled to a share. The facts were apparently these. The putative father died leaving an adopted son the first defendant, plaintiff his illegitimate son and an undivided brother the father of the second defendant. The brother died leaving a son. The suit was brought by the plaintiff for his share or in the alternative for maintenance. There was no question of disability on the part of the plaintiff personally, at any rate he was found to be an illegitimate son who could claim a share. The learned judges held that in the particular case he could not claim by reason of the fact that the father was undivided from his brother. Assuming this to be correct, we fail to perceive how he would be entitled to maintenance. Assuming, however the decision to be correct both on the question of claim for share and the claim for maintenance, as the suit was also brought against the adopted son of the father who for the present purpose must be regarded as *the legitimate son*, the case will stand upon the same footing as the case in *Anantayya* v. *Vishnu*[2]. As we have just said, there is a distinction between a claim against the undivided son and a claim against the undivided brother or co-parcener of the deceased. Both take by survivorship, but by reason of the son's pious duty to pay the father's debts, the son taking by survivorship is, nevertheless, bound to discharge a claim personal to the father. A co-parcener other

1. (1862) 12 M.I.A. at pp. 222, 223. 2. (1894) I.L.R. 17 M. 160 at 161,
3. (1904) I. L. R. 27 M. 32.

than the son is under no such pious obligation. Hence creditors of the deceased co-parcener having no charge created by the latter cannot proceed against the family property which the other co-parceners take by survivorship. A claim for maintenance in respect of which there are no special texts of Hindu Law imposing an obligation to pay from whatever kind of estate must be treated upon the same footing as a debt and if the person liable to pay dies leaving no separate property it is difficult to see how such a claim can be enforced against the undivided estate taken by the co-parceners by survivorship.

SUMMARY OF ENGLISH CASES.

La Society Anonyme De Remorguage A Hilier v. Bennetts. [1911] 1 K. B. 243.

Negligence—Injuria sine damno—Contract of towage—Tow sunk by negligence of third party—Plaintiff's loss of tonnage remuneration.

Plaintiff's steam tug was engaged under a contract in towing a ship. Defendants' steamship, by the negligence of defendant's servants, came into collision with the tow and sunk it. Plaintiff's steam tug sustained no damage. In a suit brought by plaintiffs, to recover as damages the amount of remuneration which they would have got if they had completed the contract : *Held* that though there was negligence on the part of defendants, plaintiffs were not entitled to any damages on the ground that the loss was not the direct consequence of the negligence and not one recoverable in law.

Rex. v. Richards. [1911] 1 K. B. 260.

Criminal law—Larceny—Agreement to lease—Fixtures, removal—Fraudulent intention.

A person who procures possession of a house from the owner under an agreement for a lease with the fraudulent intention of stealing the fixtures thereto is by stealing the fixtures guilty of larceny. [*Rex* v. *Nundes*[1] followed.]

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1. (1797) 2 Leach 850.

British & American Shipping Co. Ltd. v. Lockett Brotters & Co., Ltd.

[1911] 1 K. B. 264 (C. A.)

Ship—Charterparty—Demurrage—Working day—Custom of port—Reasonableness—Construction.

Plaintiff shipowners brought an action for demurrage against the assigns of a bill of lading by which a cargo of lumber was to be carried from *V* to *I* and there delivered to charterers or assigns. The bill incorporated the terms of the charterparty, one of which was that "discharge was to be given according to the custom of the port of discharge but not less than 30 mille per working day." Defendants pleaded that plaintiffs knew or ought to have known the custom of the port of *I* and that by virtue of the custom the charterparty entitled the defendants to take delivery with all reasonable despatch according to the custom of the port. On the preliminary question whether the allegation of fact constituted proper defence the Division Bench *held* that the alleged custom was too uncertain and unreasonable to be admissible in evidence to construe the bill. *Held* by the C. A., reversing the decision of the Divison Judge, assuming the facts alleged were true, that the alleged custom was a valid custom and as such admissible to interpret the bill.

Gadd v. Thomson. [1911] 1 K. B. 304.

Infant—Apprenticeship—Covenant—Breach—Injunction.

The general rule is that no action can be brought against an apprentice while he is an apprentice upon the covenants in the apprenticeship deed. But any covenant to do or to abstain from doing a thing after the apprenticeship is over may and can be enforced against the minor by a suit if it is reasonable and for the benefit of the minors.

The defendant, an infant, entered into a covenant with plaintiff, an architect, to serve for four years as an apprentice. He also bound himself not to practise the profession within a certain limit. After the apprentice period was over he committed breaches of the covenant. Now plaintiff brought a suit for an injunction. It was also in evidence that no apprentice was taken there except upon covenant. *Held* that plaintiff

was entitled to the injunction as the covenant was enforcible after apprenticeship and it was reasonable.

Wilson v. Wilson. [1911] 1 K. B. 327.

Administration—Administrator bankrupt—Right of retainer.

An administrator who is also an undischarged bankrupt has no right to retain his debts out of the assets collected unless he is solely entitled beneficially to the whole interest in the entire fund.

Rex. v. Maclean. [1911] 1 K. B. 332.

Criminal law—Indictment of one offence—Admission by prisoner of another offence—Request by prisoner that in passing sentence both should be dealt with—Principles—Practice.

The prisoner was indicted at the Berkshire Assizes for house-breaking and he pleaded guilty. Before sentence was passed he requested the judge to consider a charge of arson which was pending at the Hertfordshire Assizes and to give him a sentence covering both offences. The judge took that offence also into consideration and passed a sentence of three years penal servitude. He took no steps to ascertain the views of the Hertfordshire police authorities. Afterwards the prisoner was tried at the Hertfordshire Assizes for arson and convicted for 5 years penal servitude. On appeal the sentence was reduced to 3 years from the date of the sentence at the Berkshire Assizes. In such a case it was held by the Court of Criminal appeal that the judge may punish him for both offences if the offences were of the same character as the offence of which he has been found guilty and if the other offence was not tried. If there was a committal for the other offence, the court should ascertain if the prosecution consented. If the prosecution does not consent or it may require a separate investigation for sufficient reasons the court should not, as a matter of course, take that into consideration.

If the committal is in another county for an offence of a different character, the court should not take into consideration the other offence until it gets the consent of the prosecuting authorities. Even then the court should see whether it affects the interests of the public or not.

Evans v. Ival Granite Quarries Ltd.

[1910] 2 K. B. 979 (C. A.)

Debenture-holder—Security of—Floating charge, nature of—Execution-creditor—Conflicting rights of debenture-holder and execution-creditor.

The holder of a debenture constituting a floating security only while the company is carrying on its business, and when no steps have been taken to wind up the company or to get a receiver appointed, cannot single out a particular debt due to the company and require by notice that debt to be paid to him or not to be paid to the company or to those validly claiming through the company. The debenture-holder, not having chosen to do anything or to interfere in any way, cannot come forward and intervene in the execution by opposing the making of the garnishee order absolute and cannot by so doing prevent the payment of the creditors of the company.

A floating security is an equitable charge on the assets for the time being of a going concern. It attaches to the subject charged in the varying condition in which it happens to be from time to time. It is of the essence of such a charge that it remains dormant until the undertaking charged ceases to be a going concern, or until the person in whose favour the charge is created intervenes. His right to intervene may of course be suspended by agreement. But if there is no agreement for suspension he may exercise his right whenever he pleases after default.

Wallis, Son and Wells v. Praff and Haynes.

[1910] 2 K. B. 1003 (C. A.)

Sale of goods—Delivery not according to description—Resale by purchaser—Effect of—Exemption or barring clause—Effect of.

Defendants sold to plaintiffs certain quantity of *common English seni foin* seed according to sample under a contract which contained a stipulation that sellers gave no warranty, express or implied, as to growth, description or any other matters. The goods delivered were according to the sample but were not common English seni foin, but were of the giant seni foin kind, which are indistinguishable for appearance from the former but inferior in quality. The plaintiffs sold the goods thus bought as common English seni foin and the stranger finding them otherwise after sowing and growing them, recovered reasonable

damages from the plaintiffs. The plaintiffs sued the defendants in turn for damages. Held by the Court of Appeal (*Fletcher Moulton* L. J. dissenting) that (1) non-delivery according to description was a breach of condition which entitled the plaintiffs) to repudiate the contract and sue for the return of the money; but that (2) as the plaintiffs had by their resale put it out of the power to redeliver to the defendants the goods sold, they had lost that right and were entitled only to damages as upon a breach of warranty as provided by S. 11 of the Sale of Goods Act 1893, and that (3) as even the right of damages was excluded by the exemption or barring clause in the contract to the effect that the sellers gave no warranty expressed or implied as to the growth or description, etc., even the right to recover damages as upon the breach of a warranty was not available.

Fletcher-Moulton L.J.—concurred with proposition No. 1 but *held* as to propositions 2 and 3 that matters subsequent such as resale, etc., cannot convert a condition into a warranty that the exemption clause relieved the defendants of their liability for breach only of a warranty and not of a condition, and that the plaintiffs who sued for damages for breach of the condition were entitled to recover the same.

Marks and Co., Ltd. *v.* Knight Steamship Company Ltd.,

[1910] 2 K. B. 1021 (C. A.)

Representative action—"Same interest in one cause or matter" whether the several consignors in one ship have—Amendment—Order 16, rules 1 & 9.

To a ship which was going in 1904 from New York to Japan, several consignors in various parts of the world consigned various kinds of goods for various destinations. The Russian authorities viewing it as carrying contraband of war seized it and sunk it. The goods having been lost, two actions were brought in 1910 in England against the ship owners for damage for loss of goods. Each had a named plaintiff and purported to sue not only on behalf of the named plaintiff but also on behalf of several others who consigned goods in the ship's but the names of others were not specified in the records of action but were mentioned in the notices before suit to the defendants' solicitors.

Held by the Court of Appeal—(1) That these representative actions, as brought, were not maintainable and(2) per *Vaughan—Williams* L.J.and *Fletcher-Moulton* L.J.,*Buckley* L.J. dissenting, that these actions could not be amended even as confined to consignors of non-contraband articles.

Per *Vaughan William* and *Fletcher-Moulton* L.JJ.—The two consignors who are plaintiffs cannot bring these representative actions inasmuch as each and every one of the consignors on whose behalf they sue,cannot be saidto be persons *having the same interest in one cause or matter* within the meaning of Order 16, rule 9. The cause of action of each consignor is based upon his own particular contract with the ship owner which may vary from that of another. Some of the goods of the consignors may be contraband according to its nature or destination and the goods of others may not be. There is no common interest or purpose and therefore the one named plaintiff in each case can alone, if he likes, continue his suit. The proper domain of a representative action is where there are like rights against a common fund or where a class of people have community of interest in some subject-matter. To allow this kind of representative action would be to allow several suits based upon different causes of action though against the same individual without there being any responsibility for costs of the suits on the part of the persons represented by the named plaintiff. One action with several named plaintiffs though with several causes of action is allowable under Order 16 rule 1, where there is a common question of law or facts. For the above reasons the suits cannot be amended even as confined to persons who did not consign contraband of war.

Per *Buckley* L. J :—Cargo owners on a general ship are not partners but they have a common interest in the ship on which their goods are carried. In respect of that interest they are in a position to claim relief which is common to all of them. They can claim a declaration that the defendants are liable to the plaintiffs and those on whose behalf they sue for breach of contract and of duty in shipping contraband of war. In respect of that liability which exists towards all each is entitled severally to relief which exsits only towards himself and therefore,though the actions are not maintainable as brought the amendment pressed for should have been allowed.

Per *Fletcher-Moulton* L. J. :—No representative action can lie where the sole relief sought for is damages for they have to be proved separately in the case of each plaintiff. Cases of *named* plaintiffs are different though they are for damages.

In re Moguees *v.* *Exparte* Saleemam.

[1901] 2 K. B. 1049 (C. A.)

Bankruptcy of husband—Marriage settlement-Conveying their existing furniture and agreeing to convey future furniture—Acquisition of future furniture—Use by wife.—No formal conveyance for future furniture in the trustee of the settlement. By a marriage settlement a person conveyed his then existing furniture to the trustee of the settlement and agreed to convey after—acquired furniture also After the marriage the husband and wife lived in various houses and the husband acquired further furniture. The wife had free use of them and the trustee of the settlement was often visiting the husband and the wife but there was no formal conveyance to him. *Held* though there was no "actual transfer," from the circumstances of the case, the law presumed one, especially where no writing was required by law, and that the claim of the trustee of the settlement to the subsequently acquired furniture was superior to that of the trustee in bankruptcy.

Gordere *v.* Chief Commissioner of Metropolitan Police. [1910] 2 K. B. 1080 (C. A.)

Money acquired by illegal betting—Wrongful seizure by defendant.—Maintainability of suit. The plaintiff acquired certain monies by an illegal act, viz, street betting. He had deposited it with a friend of his whose house was raided by the police, who snatched away all the friend's papers and the articles used in gaming as those found in a gaming house under a warrant which covered only *their* seizure. The police also took away the plaintiff's money which was on the friend's table though the warrant did not authorise him to do so and though there was no lawful

excuse for its seizure. The police having handed over the money to the head of their department he pleaded in defence to the suit that it was found in a gaming house. It appeared from the plaintiff's own evidence that he acquired the money sometime before he deposited it with his friend as a result of his betting in the streets. The first court dismissed the suit on the ground that the money was acquired by illegal means and that the conrt ought not to lend its aid to the plaintiff to recover the same. *Held* by the Court of Appeal.—That the plaintiff could recover as the plaintiff has not to rely upon any illegal contract or transaction as the basis of his cause of action which was that he was the owner and possessor of the money and that the defendant had without any lawful excuse seized it. The fact that the plaintiff acquired money by illegal means formed no cause of action and was not necessary to support the same.

Per *Curiam*:—The principle that the court will not assist a plaintiff to recover money obtained in an illegal transaction applies to actions for recovery of property as well as to actions on contracts tainted with illegality. This principle would be applied in cases where the defendant is not a party to the original illegality.

JOTTINGS AND CUTTINGS.

*The Acquisition and Retention of Clients.**—When I was first invited to deliver an address to you on this subject, it occurred to me that there were only two men who could satisfactorily fill the requirements in giving such an address as this. One was a man who had in the full flesh of professional success voluntarily retired from practice, having accumulated a fortune, or for some other cause personal to himself; the other a lawyer who had died in the full practice of his profession. The latter could not very well come here; the former are often reluctant (especially when they have retired to the bench) to tell how they achieved success, or to give directions to young men for imitation. It is a difficult subject to handle, because it is very largely personal to the speaker. If the speaker gives you mere abstract generalities, his talk is but husks. Be good and be happy" does not help an aspiring lawyer very much. You have got to see how you can be good, how you can be happy. The question with every young lawyer is, how did you get the

*Address delivered by Mr. Frank J. Loesch and printed in the Canadian Law Times.

practice? "After thirty or forty years," he says, "you have got a practice." Did you have "pull" when you started? Did you have a father who was an eminent lawyer and took you into partnership? Did you have a number of strong friends who placed business into your hands, notwithstanding your inexperience? Or did you start absolutely without friends, without influence, without pressure behind you to bring practice to you? The answer to such questions, however admirable it may be from the standpoint of a practitioner, cannot fit all men. It may fit some. It may fit some who are strangers in a strange city. It may fit others who have numerous friends. What may apply to one may not apply to the other. Therefore it is for each of you to pick out from what I have to say this evening what may be applicable to your own circumstances.

I think it would not be inappropriate if I speak frankly, and if not in an egotistical sense, I draw lessons in considerable parts from my own experience, which may prove applicable in the coming years to yours. It is first necessary, in order to give you some light on present conditions, to say what the conditions were when I was admitted to the Bar just thirty-one years ago. In 1874 there were no telephones; nor were there typewriters; there were no stenographers, there were no district messengers to call. There were none of the facilities that you have in handling practice to-day. When a client wanted to get your advice he had to come to your office, no matter how distant it was. When you wrote your clients a letter or gave a written opinion, you had to write it out in handwriting, or your clerk had to write it out for you. Telephones were used first in the early part of 1870; typewriters about 1882-3-4 they were not in very general use until after 1885. An office stenographer was a luxury that very few of us could afford. I re-call one firm in 1874 or 1875 that had one well paid stenographer. In those days, moreover, there were no trust companies to absorb business as administrators, executors, guardians or conservators. There were no casualty companies to insure employers against liability. A number of other methods are taking practice in these days that went to lawyers in those days. So that many of the doors that were open to us younger lawyers in those days are closed now. Yet while you close one door you open another. The great corporation, such as the rail roads, the title and trust companies, the banks, the manufacturing concerns, the trusts, had no such legal staffs as they have to-day. You will find in some of the large corporations a staff of from three to

ten or fifteen lawyers, most of them at very fair salaries. That door has now been opened to the young lawyers. At that time it was usual for a young lawyer to go into an office, either without pay, or at merely nominal pay, in order to study law while he was getting himself ready for the Bar. Or, if he had been admitted to the Bar, he could make an arrangement to receive a certain small salary, and at the same time be permitted to work up his own clientage. That is now, I think, rather rare. Wherever you can make that arrangement with a good lawyer, it is a most advantageous one, in my opinion, for the young lawyer. But I apprehend that now-a-days, usually, you must make up your mind to one of two courses; either to start out for yourself, alone or in partnership with some other lawyer, or to go as a clerk into a law firm.

But before I come to the consideration of that problem, I wish to lay down some propositions as to the essentials of a lawyer—the qualities he ought to have when he starts out.

1. I think the first one is sound health. You may just as well make up your mind at the beginning, gentlemen, that unless you have sound physical health you cannot endure the strain of a law pratice. Whether that strain comes as a trial lawyer, or whether it comes in the sometimes more exacting work of the office, or of preparation for the trial, at any rate the strain that is put upon you time and again requires steady nerves and sound physical condition. If you have not got that and you cannot get it, seek some other employment; for your career will be full of bitterness and disappointment. I have seen it illustrated too often not to warn the young man at the beginning.

2. A good education is absolutely necessary—much more than it was a generation ago. At that time an academic education was not as common as it is now, and requirements were not as strict. The requirements that were looked for in the lawyers were not as great as they are now. Therefore, you must have the essential foundation which the academic education gives you. If you do not get it in college, you must spend a great deal of hard work in the endeavour to make up for the lack of it. I speak of it from personal experience in struggling to make up those deficiencies. I did not even finish the grammar school. I left school at twelve years of age to begin business, and what education I got after that was casual. I therefore realised how very hard I have had to work to make up deficiencies, and I do not claim to have made them up more than in part. I feel that the years that a young man can spend in acquiring a thorough sound education are never ill-spent. They will give him usury on the time that he puts into them.

3. Another thing that a young lawyer needs is character. Character is a very elusive sort of thing. It may be what your reputation is, or it may not be. Character which you get from the public may be one thing, and your real character may be something else. But what you want is a real character, which impresses the people that you come in contact with, and makes an older man say, "That is a likely young man, I like that young man. That young man has some character about him." That sums up a great deal; it means courage; it means firmness; it means having his own opinion about things. It makes that impression upon the clients and the people that you want to be your clients, and those that you want to have for your friends. That character, in part you have to make. You have it, of course when you start; but you have still to make it as you go along—by your experience, your observation, your reading, your conduct with men.

4. Honesty, I need hardly mention, because it is absolutely essential—in spite of the fact that the dishonest rogue does once in a while succeed. Yet, as between man and man, the honest man is the one that wins in the long run. It is the honest lawyer who gets the confidence of his clients; and that begets the confidence of the community. Being one day in court, after I had been practising two or three years, I noticed the deference with which an elderly lawyer was treated by the judge—a judge who was usually very severe, and raked the lawyers fore and aft. As I observed this old lawyer arguing the case, I thought I could do it better than he was doing. He did not seem to know how to conduct it. He did not know what to do with his witness. He fumbled, hemmed and hawed and did not express himself with fluency. But he won his case in the end. I made some inquiry about him. I found that that man's integrity was so well established and he was known so well for straightforwardness with clients, that the Bar and the Bench respected him, and he enjoyed the emoluments of a high reputation without having either the fluency or the skill which other lawyers possess. One of the most eloquent lawyers that we have ever had at this Bar, but a man utterly without moral character, spoke to us once, in the old days at this law school, when he was so under the influence of liquor that he could hardly stand. "Gentlemen," he said, "I am a living example that eloquence alone cannot make character in a lawyer," and he went on, as he tottered on the platform: "Resist temptation. Resist when it first comes to you. Resist when it second comes to you. Then the time surely comes when you will not have to resist." I never had such a lesson, nor did any of us.

5. Industry is essential, of course. Young lawyers are apt to think they are not advanced fast enough. They feel they are

doing hard work, and that it ought to receive more appreciation. Now all I can say to you on that is that you cannot succeed in the law without the very hardest of work. We have all worked hard before you. We have worked when it seemed well nigh hopeless. We have all known the times when everything seemed dark, though we have been at it for years, and worked and worked and worked, until there seemed to be no end to the work and the worry and the anxiety, and we were ready to give up. And yet the day and the dawn and the brightness finally came. It is that very work that gives you your skill as a lawyer. The labour has to be undergone to prepare you for things that are to come.

6. Another matter of supreme importance, gentlemen, is tact. I cannot put it a head of honesty, to be sure, nor of sound health, nor of character ; but it is very important. As a help to put yourself before the public, before your friends, before your would-be clients, the Judges, and the lawyers, tact is one of the essentials. Tact (without knowing what the dictionary says about it) is saying the right thing at the right time, and not the right thing at the wrong time or the wrong thing at the right time. It is not hurting anybody else's feelings unless you have got to hurt their feelings. It is the ingratiating yourself into the good will of other people—just as the charming hostess, when she receives a multitude of people, some of whom she does not like, and some of whom she may detest, receives them all, not to the expert eye alike, but apparently alike, so that those whom she may dislike cannot see that she dislikes them. I am going to read you something from Hamlet. The wisest things that Shakespeare says he puts into the mouths of fools. Perhaps it was a part of wisdom and caution in those days when they were nailing people's ears to posts for libel. With little alteration the advice of old Polonius to his son Laertes, as he starts off to foreign countries, will fit the young lawyer to the dot:—

"These few precepts in thy memory :
Look thou character. Give thy thoughts no tongue,
Nor any unproportioned thought the act.
Be thou familiar, but by no means vulgar :
The friends thou hast, and their adoption tried,
Grapple them to thy soul with hoops of steel :
But do not dull thy palm with entertainment
Of each new-hatch'd, unfledged comrade : Beware
Of entrance to a quarrel ; but, being in
Bear it, that the opposed may beware of thee :
Give every man thy ear, but few thy voice :
Take each man's censure, but reserve thy judgment ;

Costly thy habit as thy purse can buy,
But not expressed in fancy; rich, not gaudy;
For the apparel oft proclaims the man.
And they in France of the best rank and station,
Are most select and generous in that:
Neither a borrower nor a lender be,
For loan oft loses both itself and friend,
And borrowing dulls the edge of husbandry.
This above all: To thine own self be true;
And it must follow as the night the day,
That thou canst not be then false to any man."

"Beware of entrance to a quarrel." What is the good lawyer? He is exceedingly cautious how he enters upon a legal contest. Be very careful about putting your clients into litigation. But when they are in it, gentlemen, bear yourself so that your adversary may fear you and respect you.

"Take each man's censure; but reserve thy judgment." Listen to all that can be said to you by your clients on a case; do not disclose your thoughts at first blush. Wait until you have had the story, and then deliberate over it. Speak deliberately.

And do not run in debt. There are very few of us that can follow that advice. I could not when I came to the Bar. I think there was a time in my life when my creditors were as numerous as Lincoln said that brigadier-generals were during the war. Somebody asked him if he knew whether there were any brigadier—generals in Washington. Lincoln replied that if the inquirer would throw a stone at any yellow dog in the Street he would be sure to hit a brigadier—general. In my case, I went into debt to secure my legal education. It is upon this rock of debt that most of us lawyers split. We go to shipwreck upon it. Some of us seem never to be able to get out of debt—debts incurred through heedlessness and thoughtlessness. An old lawyer once said to me, when I asked him what rules he would give to a young man entering the practice, "I have just two. One is never to touch a drop of intoxicating liquor; and the other is, never to run into debt." Those were his two failings. He drew the lesson of life from his own failings. And I have realised that lesson as I have seen young lawyers struggling against a mountain of debt, sometimes heedlessly entered into.

But now to my main subject. When you have come to the Bar, and are going to begin, how will you begin? Will you go out for yourself, or in partnership with another young lawyer, or enter as clerk into another's law office? I have no hesitation in ad-

vising a young lawyer to go into a law office as a clerk. I would not advise him to go into a large law office; where he would be lost. But a law office clerk-ship should be the starting point; and, in my judgment, if there is any luck in a lawyer's career, it is just at that particular point. There is an element of luck in every man's life.

I do not care how industrious he is, how temperate, how honest, how thrifty, how saving, how abstemious, there is somewhere an element of luck. In my judgment, it is when he starts that the luck affects him. I know men, young men, who started wrong and never got right; and I know of others who, by being started right, were kept right. I know a certain lawyer, who has now a practice of probably ten thousand dollars a year—a bluff, hearty, off-hand fellow. I said to him, "John, how did you get your practice?" "Made it myself," he said; "never inherited a bit of it." He seemed to think I thought he had inherited it. "How did you get it?" "I was honest with my clients." "Was that all?" "I worked night and day, night and day." "Is that all?" "Well, when a client came in with a case, and I didn't think he had a cause I told him so." "Was that all?" Yes, I think so." "Whom did you start with?" "Well, such a man—" I said, "John; was he not the best common law lawyer at the bar?" "Yes." "Who was his partner?" "Such a man—" "Was he not the ablest real estate lawyer we had, one of the squarest men?" "Yes." "Who was the junior member? Did he not have a very fine pratice among the Germans? A man of square dealings?" "Yes." "Was there no luck about your getting into that office?" "Now you speak about it I re-call that I thought that I was extremely lucky in getting into that office, and those men did help me and did give me advice, and the way they practised is the way that started me straight." I said, "John, it was your luck." Gentlemen, none of us make ourselves. It is the veriest rot on God's earth to tell me that a man is a self-made man. Who makes us? Our friends make us. It is the men and women that we come in contact with that make us. We take our cue from them. Who are they? If they are responsible, if they are high-minded, if they have a standing in the community, if they are looked up to, then we get their reflected lustre. We are pushed on by them. We get a good word from them, and it makes us. Perhaps we go with them and go right; or perhaps we go the other way. We are done or undone by them. Now it is that consideration

which the young lawyer has to keep in mind. He may start wrong at that particular spot. When you look for a position in an office, do not go into the office of a man who has a shady reputation. Go in with a man of more moderate ability, if it is necessary, who has an honourable standing with the members of the Bar and with the Bench, and then you will get started straight.

The ideal place for a young lawyer is in one of two or three places. One of these is the office of a lawyer of perhaps middle age who has too much to do for himself, does not want to take a partner; but wants a helpful young man who will be honest with him and not steal his practice. That is what the older lawyers are all afraid of, that the young lawyer will run off with the business. It is not so easy to do this, but they are afraid of it. And so, though they cannot do the work alone, they are often afraid to take in a partner. If the young lawyer makes himself useful, if there is any personality in him, there is a prospect of a heritage of business. When the old lawyer steps out, some of his clients will go to the young man, and many who do not will say a very good word for him.

Or he may enter the office of a firm of two or three who are over-burdened with work. Perhaps they throw upon you work heavier than you are able to bear. But that is what you want; lots of work and responsibility are what make you a good lawyer. You have got to have independence of thought and of judgment, in order to be a good lawyer; and the sooner you begin your training on that line, the sooner you will be standing on your feet. The older lawyers will notice it on every side—more than you have any conception of. While you are thinking that no progress is being made, they are watching you, and seeing you and taking your measure.

I would have no hesitation about beginning as clerk in an office. In addition to an immediate compensation that will suffice to support you modestly, you get experience. You get experience from the things you have to do and from your observation of how the older lawyers do the work. You may be in your own office ten years and not see how certain things are done. There is a great deal of truth in what the city comptroller said to me two or three years ago: "This town is more than full of young lawyers who don't know how to get cases into court, and don't know what to do when they get them into court, and don't know how to get them out of court when they have them there." You must follow the experience of the older men. You must ask their advice. This you cannot get when you are seeking to practise alone; and the beginnings are thus

very much more discouraging. Now that sort of thing you ought to do from three to five years. I doubt whether three years would impart the experience. But it is not worth while for you to wait too long. If you see no chance of promotion make your change to an office where there is some chance of promotion.

Believe that you are going to amount to something. Have some faith in your future, and be able to stand up for yourself. Judge yourself right. If you are too modest and depreciate your own ability too much, you will be measured the same way. If you are too conceited, and your abilities do not come up to your conceit, you will fall even below your real ability in the esteem of others. But when you have realized your character and your ability, it is your duty to assert it on every particular occasion.

If then you have to work as long as Jacob worked for Rachel, during those years you ought to acquire a thorough knowledgeof the statutes. Get thoroughly familiar with them. I spent the first two years of my practice on them. The young lawyers of to-day do not go enough into the statutes. It is also essential during these years to get a fair knowledge of the the Supreme Court decisions and the Appellate Court decisions. What makes the sound lawyer is going to the bottom of every question that he is set to work on. Don't shirk the work. Go to the bottom until, when you get through, you are satisfied that you can teach the Judge on the Bench the law of that case.

Ninteen times out of twenty you can do it—you can go into court better prepared than the judge. Then you will understand what the English lawyer meant, who, when he was asked what was the difference between heaven and hell, said. " When I go into court well prepared in a case, then I am in heaven. When I go into court ill prepared then I am in hell." There are always surprises in every case. You cannot always anticipate them, but you need not be afraid about your case when you are prepared. It makes all the difference in the temperament of your mind in the handling of the case whether you have prepared it out of the court room or prepared it in the court room.

When your first client comes to you, you should not receive him with a high and mighty air. Be humble,—not like Uriah Heep, but be humble and thankful at the same time that the man is willing to trust you with the case. No matter how trifling it may be, do not treat it lightly.

Receive your client with respect. Listen to his story from beginning to end. You will secure more credit by being a patient listener than you will by talking. When he leaves the office, you may have said practically nothing, but he will go out and give you the credit for all the wisdom which you do not have. Emory Storrs was one of the wittiest lawyers at the bar, a few years ago. At that time we had on the bench a judge who had been a Justice of the Peace. When we were arguing a case before him, he would hesitate. " Well, gentlemen, I-ah- I-ah- I am not sure about the law on this. I-ah-I really don't know what the law is ; but-but-but-I-ah-I, I will have to-I-I, I think I will have to decide this case ;" then hem and haw, "I will have to let the Supreme Court decide upon it." There was also another judge who, no matter what proposition he was confronted with, would straighten up and say: "You need not argue any further, Mr. Loesch. When I was counsel for a certain city at such a time, that same point came up, and I settled it, thirty years ago. You need not argue any further." Mr. Storrs, in speaking about the two judges said that " if a lawyer only knew all the law the first judge didn't know, and all the law that the other one thought he knew, he would be the best lawyer on God's earth."

Another thing that tells in your work is accuracy. The accuracy and the promptitude of your work have a very great effect on your client. The first piece of work well done gets his friendship. I often hear lawyers complain about clients' ingratitude. True, many of them are ungrateful. But if we are paid our fees we ought not to ask for gratitude. What you should strive for with the client is an affectionate regard, not gratitude, but such an affection for you that he comes back to you because of his regard, his interest and a liking for you —his affection for you. Those are the men that stay by you from the beginning. Something like twenty years ago, a man came to me and asked me to draw up a contract he wanted the next day. He told me what he wanted. I drew up the contract. When he came back the next day it was ready. I was a struggling young lawyer. I charged him five dollars. I should have charged him at least ten dollars. The fees were not as large then as they are now. I saw a smile on his face; but he paid, very much pleased. Two or three years afterwards (I had never seen the man in the meantime) he came back and said : " Mr. Loesch, " dumping down a lot of papers, "I am going to close a contract tomorrow at three o'clock. These papers must be examined by that time. My option expires then." I looked over the papers and said : "I

don't know whether I can finish it or not." "Well," he said, "you must try." I went home and worked until two o'clock in the morning; then went to bed, having set the alarm clock. I got up at four o'clock. I worked until two o'clock next day, and then came down town. He found the contract ready; and he closed the transaction. I received a fee of 25 dollars. He paid it very cheerfully and has been a constant client from that day until this. There has not been a year when he has not paid me several hundred dollars, sometimes three or four thousand dollars. Now that grew out of a five dollar fee. He saw that I took an interest in the case. He saw the promptitude and the zeal with which the work was done, and it made a permanent client of him.

Here is another instance which happened twenty-two or twenty-three years ago. A man came to me with a liitle piece of work, sent by an older lawyer who had not time to do it. I drafted a contract for him and charged him fifteen dollars. He was a stranger in the city but he was back at my office within three or four days, and asked me to draft another paper for him. I charged him twenty-five dollars. It went from one thing to another, and now I am receiving considerable practice from that source. I got a fee within the last two or three months of several hundred dollars that grew out of that transaction. Business grows and a clientage is acquired by the recommendation of our clients.

During the several years you are on your probation you will need to make acquaintances. You will make very few useful acquaintances, perhaps, but in order to get those you may have to make very many. I do not think joining clubs amounts to very much. But I do think you should take part in some reform work. There are two reasons for that. It is not only that this will equally give you acquaintances and standing, but (what is more) it will help you to pass over the gloomy days that will hang upon you in those years. You will have something to lift you out of yourself. The very best acquaintances I made in the early years when I was helping to defeat the boss of my own ward. Political work of the higher sort brings you in relation with the leading and coming men. The young lawyer is always looked upon with pleasure by old political leaders, even though they cannot draw him to their side. They are very glad to treat him on equal terms, and to give him the best there is. The first thing they try, to be sure, is to seduce him. Make up your mind at the start whether you are going to take an office. If you seek an office, you will be a failure as a

lawyer. If you are going to be a lawyer put aside the offers that are being dangled in your face. These offers should serve merely to shew that you are getting some consideration.

During those same years, gentlemen, there is one particular respect in which you must begin to lay the foundation for old age. Lord Romilly said that the unhappiest sight he had ever seen was the old lawyer who has ceased to read. During those years make your acquaintance with good literature. Read the literature of the lawyers. Read the lives of those great lawyers and judges of England. Read the literature of human nature. The lawyers can gain many points by reading.

To my mind Balzac is the greatest judge of human nature after Shakespeare. I think I learned more of human nature (outside of my own experience) from Balzac than I have from any other author except Shakespeare. I recall especially "Eugene Grandet," the history of a miser. I have read that book two or three times, and this is how it profited me afterwards. I was retained in a very serious case of fraud. I studied the party on the other side. I made up my mind that if ever there was a miser out of the pages of literature this was the man, and that Grandet was his literary father-in-law. I studied "Eugene Grandet" again and then I attacked that opponent. It was an eight years' task. But the image of Grandet helped me to hound that at the end of eight years there was not anything but his hide. The greatest admirer of the work I did is that man's own lawyer; but he will not give me credit for having any legal acumen. He maintains that I knew all the facts beforehand. Yet the truth of the matter was that I did not; I drew the bill before I had the facts. I merely judged the man's character from what I had read of "Eugene Grandet." That experience was to me a life lesson.

Let me allude also to another case, one that nearly broke me down with the mental and physical strain. I had bought every book I could find on that particular subject. I had a year to prepare for the actual trial of the case. There were very eminent lawyers on the other side; I will not mention names, for the parties are living. But I did not receive from all these books as much light as I did from a certain classical novel, one that characterised exactly the plaintiff's object and put that party in the lime-light. With that aid I was able to follow all the ins and outs of his manoeuvres, and finally to win the case. It was a work of fiction that guided me to a right solution of that person's character and a knowledge of his character that was essential to victory.

Still another lssson I now recall which I learned from reading—a lesson I will never forget. I refer to a gentleman by the name of Gil Blas. Gil had various and sundry adventures, and among others he was made Secretary to the Archbishop of Toledo. The Archbishop said to him one day: "Gil I look upon you as a very likely young man; I like your intelligence and your acumen. Now I am getting old. I have to preach once a month. Make it your duty to let me know when you see any failing signs in my mental powers. I will trust you as a friend to tell me about it." So Gil noted the character of the sermon next month. Then he heard the ensuing sermon; and he thought the Archbishop showed signs of age and senility. At the third sermon he was more satisfied of this, and the fourth was shockingly significant. He complimented the Archbishop on the first sermon, and spoke fairly of the second, but of the others he did not. The Archbishop asked "Now Gil what is the truth?" Gil said: "Your Eminence, your mental powers are failing rapidly." 'Gil,' responded the Archbishop, "I find that I am mistaken in your acumen. The treasurer will pay you and you will leave the house." I have never forgotten the moral of that story. Such incidents of literature add to your knowledge.

Coming now to another matter resting much on a knowledge of human nature, I may refer to the lawyer's charges. I think that every lawyer will say that that is the most difficult thing he has to deal with. We have no blll of costs here as they have in Canada, Germany and England, and therefore every lawyer has to judge for himself what his services are worth. That is the rock upon which a great many lawyers split. They charge either too much or tco little. Of course, what you should try to do is to charge the happy mean. But remember that it is better to undercharge than to overcharge. You may be doing yourself a wrong, but it is better to get a reputation for reasonable charge than for unreasonable charges, for the unreasonable charges may drive the clients away, while the reasonable charge may bring him back again. It is a useful thing to argue with your client and shew him what is his due. Considerate treatment makes him feel that you have an interest in him personally, and not in his pocket-book.

Beware of unfair rivalry in the business. In these days of warm competitfon, you are often tempted to forget the proprieties. I was going down Dearborne avenue some years ago and I met a leading lawyer who seemed to be in low spirits. I said: "What is the matter with you this morning?" "I was just thinking," he replied,

"how mean some men are in our profession. An honest and successful lawyer, who has a very fine practice, has just stooped to a mean trick at my expense A client of mine, a very rich man, died ; the notice of his death appeared in the papers ; he left a considerable estate. But I got no notice to take care of it, and I was much puzzled. Of course it was not for me to offer my services. But a few weeks after the death I was at Graceland cemetery, and by accident I came to the grave of this former client of mine. There I saw a number of floral decorations which had been placed about the coffin ; and the largest piece had the professional card of this particular lawyer attached to it. On sending over to the Probate Court, moreover, I found the man had charged it to the estate." The sequel was that the lawyer that sent that floral decoration was afterwards sent to the penitentiary. I shall not deduce from that that every lawyer who gives a large floral decoration to a rich man's widow is going to be sent to the penitentiary. But I do warn you against that method of getting practice. I preach to you here that the only sure way of advancement is a close application to any and all legitimate professional work. The rest will take care of itself, Each piece of honest professional work breeds more clients. As an illustration of that, of how clients come to you from sources which you did not seek and could not have expected, and come because of your honest work in what has been confided to you, let me add one more illustration from my own experience, twenty-five or twenty-six years ago. I was junior partner to an old lawyer here, and there had been a foreclosure on a railway mortgage. The papers had all passed and were sent here to my partner to look over for record. It is my habit never to put an instrument upon record without seeing whether the instrument is in all respects duly executed. After his perusal of this document it was handed to me for record. I discovered a very serions omission, and I called his attention to it. He wrote a letter to the eastern counsel calling his attention to it. Of course it made a commotion at the head office; for seven or eight attorneys had passed by these slips without noticing them. The paper was corrected and sent on here. The story that follows was told to me afterwards, and I do not tell it to you in an egotistical sense, but simply as an illustration and a lesson. The eastern counsel of this important railroad was much impressed by the fact that so slight an error should have been discovered by the Chicago attorneys, and he came to Chicago to ascertain who it was that had found it out. How he did find out the discoverer of the error I do not know ; but certainly not from me. Three or four years passed and my partner died. The railroad business that had been in his hands was given to other lawyers. Two or three months afterwards I received a telegram from the east asking

to come there to the railroad office. I went down and the chief counsel said, "Mr. Loesch, we have decided that we can make use of your services. We have handed our business over to other lawyers in your region, but we are now satisfied that you are the one we want, and it is only a question of compensation if you are willing to take the work." The compensation was fixed to our mutual satisfaction. That was the way in which I became the attorney for the Pennsylvania Company. The eastern counsel told me the whole story afterwards, and said: " Ever since that error in the papers I determined to keep track of you. After your partner had died, and other officers had caused the new lawyers to be appointed, I determined that if the other lawyers did not do their work satisfactorily I would turn to you. I watched the opportunity; the opportunity came. You were sent for. That is all there is to it." My story illustrates that it is impossible to tell how a lawyer's good work is going to make clients, but he may be perfectly certain that it will strike some-where and at some time.

There is another thing—something that brings such misery that it seems I must speak of it. It is the debts or incidental money that the lawyer collects for his clients. When you collect money for your client, pay him the money the same day or as soon as possible. That is the rule that I have adopted, simply because I have seen in my younger days the misery that is caused by other men using their clients' money. The moment you get money pay it to your client. Pay it over. If you keep it in your hands, see that it is kept entire and not touched. If you are hard up, borrow money, but don't use your clients' money. Then you avoid all temptation. They have meant well when they used their clients' money; but then the client called for it and they could not pay it back on the instant; then came lies, then perjury, then defalcation and embezzlement, dishonour and death. How many have gone that way; and it is in carelessness about collections that the first false step is generally taken.

There is one other thing to remember, gentlemen, and that is that when you begin your practice it is to be for a lifetime. It is not with the expectation of making money quickly. It is going to be years. You may be fifteen years getting on your feet. To be sure, your profitable years will come only after you are forty or forty-five. You will then earn the rewards for the work you have done. You will be favoured with your clients. No man is so happy as the professional man who stands well in his profession, knowing that

he has earned all that he has got in reputation or in money. Build that for thirty or forty years and you will build firmly.

But do not forget that you can build but slowly. The first year I practised, my receipts were 273 dollars; the second year I received 400, the third year I received 460, the fourth year it was 720. In a year or two more it was 1,800; the next year dollars 2,100, the next year 3,300. dollars. That was about ten years from the time I began. Then it reached 4,000, then 4,500, then 5000; then 6,000, then 7,000, then 10,000 dollars; and I am not going on further this evening.—*Canadian Law Times.*

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Law Reporting Rules.—The Madras Series.—At the present day when it has become almost the fashion with many journals now extant in India to hunt up and report any and every case and the energies of the legal profession are almost sapped in the matter of hunting up cases and studying the reports all and sundry it will be interesting to know from the following rules framed for the conduct of the reporter in the selection of cases for reporting, the original intentions of those who were quite competent to lay down rules and regulations in the matter. We would further wish to know how far the conduct of official reports satisfies the requirements of the rules. We would in particular draw the attention of the Madras Law Reporting Council to these rules, if they have escaped their attention up till now and to ask them the question as to how far our Madras Series Reports satisfy them.

10. In framing reports regard shall be had to the following general rules and principles :—

(*a*) Every report ought to contain a statement of all facts necessary for a due understanding of the decision.

(*b*) Reports ought not to state any facts which are clearly unnecessary for a due understanding of the decision.

(*c*) In judging whether to insert or to omit a statement of facts, it is better to err on the side of overstatement than of understatement.

(*d*) It is not meant that the Reporter must state the facts over again if there is a clear, full and consecutive statement of them in the judgment.

(*e*) As a general rule, cases for which a full statement of facts cannot be obtained are not to be reported.

(*f*) As a general rule, every report ought to contain a statement of the arguments of counsel, sufficient to show what points were pressed upon the court.

(*g*) The Reporter should note any material bearing which the decision may have on other decisions or any principle of law, and which is not otherwise apparent on the face of the report.

(*h*) Every report ought to contain a full copy or account of the judgment delivered by the court and by each Judge thereof or of so much of the judgment as bears on the point for which the case is reported.

(*i*) As a general rule, cases turning upon evidence or inferences of fact, cases relating to the construction of private documents, and, generally, cases which do not illustrate some principle of law or some important bearing of an enactment in a way not covered by previous decisions, ought not to be reported.

(*j*) In selecting cases for report, the Reporters are to be guided by the weight and importance of the decision, and the existence of materials for a satisfactory report, and are not to abstain from reporting a case merely because they may think the decision to be erroneous, or to be in conflict with other decisions.

BOOK REVIEWS.

Hindu Law: By J. R. Gharpure, Esq., B.A., LL.B., *Vakil*, High Court, Bombay, 2nd Edition. Price Rs. 5-8-0. Postage Extra.—The present is an improved edition of the author's first edition in 1905. The book is intended mainly for students and is a guide to other works. The author has also taken care to make the book useful to the practitioner. There is an appendix and an interesting Note on the Principles of Interpretation according to *Mimamsa* doctrines.

Workmen's Compensation Act, 1906, *with Notes*: By W. Addington Willis. Messrs. Butterworth & Co., London. Price 5*s*. —The cases under the Workmen's Compensation Act are piling up in England and the necessity, for a new edition of the author's commentary is manifestly apparent. The introduction gives a short summary of the history of the previous legislation, and the notes upon the sections are very full and complete. We think the book will be found useful.

The Indian Railways Act IX of 1890 *as modified up to December* 1909: By Messrs. Dayabhai Ijatran Mehta and Popatlab Amthusa Shah, Pleaders.—A useful commentary on the Railway Act is a desideratum, and the authors should be congratulated on their efforts to supply this want. Their attempt to collate the cases under the different sections in the appendix is commendable. The book contains much useful information connected with the subject.

The Law Relating to Electrical Energy in India: By J. W. Meares, Esq., Electrical Adviser to the Government of India, 1910. Messrs. Thacker Spink & Co., Calcutta. Price Rs. 10.—The electrical industry is becoming important in India and the author must be congratulated in attempting to familiarize the public and the profession with the law relating to electrical energy. The Indian Electricity Act published in 1910 contains the law on the subject and to the short notes to the sections the author has added a useful introduction which gives in a small compass the general law. We hope the book will be found useful.

Acknowledgments.

We beg to acknowledge receipt of the following publications :—

A Practical Guide to the Death Duties and to the preparation of Death Duty Accounts: By Charles Beatty (Solicitor). 3rd Edition, 1911. Effingham Wilson, 54 Threadneedle Street, E. C., London. Price 4*s*.

A Treatise on Bills of Exchange, etc. By Sir T. B. Byles, late one of the Judges of Her Majesty's Court of Common Pleas. 17th Edition, 1911. Sweet and Maxwell, Ltd., London. Price- 25*s*.

Customs and Customary Law in British India Tagore Law Lectures 1908. By S. Roy, Advocate of the High Court at Calcutta.

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Calcutta Law Journal	Do
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